Synopsis

RECENT DEVELOPMENTS IN THE LAW OF THE SEA 1977-1978

INTRODUCTION

This Synopsis surveys the major events that occurred in the Law of the Sea between March, 1977, and December, 1978. It discusses the Sixth and Seventh Sessions of the Third United Nations Conference on the Law of the Sea (UNCLOS III) at length as well as other significant events that occurred during this period. Primary sources consulted in compiling this Synopsis include *International Legal Materials*, the *United Nations Monthly Chronicle*, the *United States Department of State Bulletin*, *United States Code Congressional and Administrative News*, the *American Journal of International Law*, the *Journal of Maritime Law and Commerce*, the *New York Times*, the *Wall Street Journal*, the *Washington Post*, the *Los Angeles Times*, the *Christian Science Monitor*, and the *London Times*.

UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Background

UNCLOS III held two exhaustive sessions in 1977 and 1978 in an effort to decide the control and management of the world's oceans.[1] The negotiations during the last two years focused pri-

1. Previous sessions of UNCLOS III were held in New York City in 1973; in Caracas, Venezuela, in 1974; in Geneva, Switzerland, in 1975; and in New York City

marily on resolving the main problem facing the diplomats—the management of mineral nodules on the ocean floor.[2] Because of the impasse this issue has caused, many commentators and scholars have called for a reevaluation of United States involvement in the negotiations.[3] The following section summarizes the intense debate within UNCLOS III that has occurred during the last two years.

Sixth Session of UNCLOS III

The Sixth Session of UNCLOS III was held in New York City from May 23 to July 15, 1977.[4] The Revised Single Negotiating

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in 1976. *See* Synopsis, *Recent Developments in the Law of the Sea 1976-1977*, 14 SAN DIEGO L. REV. 718, 719-20 (1977) [hereinafter cited as *Recent Developments*].

2. For a discussion of United States involvement in this area, *see* text accompanying notes 64-74 *infra*.

3. Many articles have been written on whether the United States should continue to participate in UNCLOS. *See generally United Nations Conference on the Law of the Sea: Panel Discussion at the Annual Meeting of the American Bar Association*, 12 INT'L LAW. 21 (1978). For a discussion of reasons for continued United States participation, *see* Charney, *Law of the Sea: Breaking the Deadlock*, 55 FOREIGN AFF. 598 (1977). Professor Charney contends that a go-it-alone attitude on the part of the United States would have detrimental repercussions on the right to unimpeded transit through straits and on the development of relations with States that border the straits. Professor Charney further contends that the United States has an ample supply of the minerals produced from seabed mining and that because of the political instability among land-mining States, an OPEC-type cartel is unlikely to develop among the mineral producers.

Some commentators think that the seabed issue should be severed from the UNCLOS negotiations and decided separately because of the impasse over the issue. Smith, *The Seabed Negotiations and the Law of the Sea Conference—Ready for a Divorce?*, 18 VA. J. INT'L L. 43 (1977). *See also* Dickey, *Should the Law of the Sea Conference Be Saved?*, 12 INT'L LAW. 1 (1978). For a discussion of reasons for United States withdrawal from UNCLOS, *see* Darman, *The Law of the Sea: Rethinking U.S. Interests*, 56 FOREIGN AFF. 373 (1978). Darman contends that current negotiations have not taken into account United States interests in seabed mining and that the United States should reject the present treaty. Accordingly, failure to reach agreement at UNCLOS III would not harm American strategic interests. Darman suggests that the United States should proceed with negotiating a series of mini-treaties which would take into account American economic interests and allow developing States to participate and share in the profits. *Id.* at 393-95.

Other commentators think that even without an UNCLOS agreement, the emerging international customary law will suffice to solve the problems now being negotiated, especially the problem of seabed mining. Laylin, *Emerging Customary Law of the Sea*, 10 INT'L LAW. 669 (1976). *See also* Alexander, Cameron, & Nixon, *Costs of Failure at the Third Law of the Sea Conference*, 9 J. MAR. L. & COM. 1, 10-16 (1977).

4. Informal discussions were held in Geneva beginning on February 28, 1977, at the initiative of Jens Evensen, Norway's Minister for Law of the Sea and a key negotiator in UNCLOS. N.Y. Times, Jan. 11, 1977, § 1, at 14, col. 2. The talks lasted until March 11, 1977, with more than 80 States represented. Primarily, participants sought a compromise on the seabed mining issue. *Id.* Mar. 12, 1977, § 1, at 37, col. 5. This session apparently made progress when Elliot Richardson, newly appointed chief delegate of the United States at UNCLOS III, committed the United States to finance up to 20% of the Enterprise. The Enterprise is the operating arm of the

Text (RSNT), which had been drawn up at the end of the 1976 session, served as the basis for the 1977 negotiations.[5]

The Sixth Session, like previous sessions, was divided into three Committees.[6] The First Committee, which is responsible for the management and control of deep seabed resources beyond national jurisdiction, dealt with the most difficult question facing the entire Conference: Who will reap the riches from the ocean floor? It has been estimated by the ocean mining industry that the potato-sized nodules containing manganese, copper, nickel, and cobalt are worth over three trillion dollars.[7]

Compromise had seemed possible during the course of the negotiations, primarily because of the efforts of the Conference Vice President, Jens Evensen of Norway. Evensen was the progenitor of the "Evensen Text," which contained several proposed revi-

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International Seabed Authority (ISA), which is to regulate seabed mining. *Id.* May 23, 1977, § 1, at 3, col. 1.

The Austrian and Nigerian delegations promulgated a further proposal concerning the Enterprise. Paper submitted by Ambassador Wolf, in Report of informal consultations in Geneva 50 app. (Apr. 28, 1977), *reprinted in* 1 FORSCHUNGSINSTITUT FÜR INTERNATIONALE POLITIK UND SICHERHEIT, STIFTUNG WISSENSCHAFT UND POLITIK, DOKUMENTE DER DRITTEN SEERECHTSKONFERENZ DER VEREINTEN NATIONEN—NEW YORKER SESSION 1977, at 310, 351 (1977). Rather than creating one Enterprise to deal with all mining activity, their proposal suggested that the ISA "form a separate Enterprise for each mining venture, in partnership with a consortium of states or their mining companies." Borgese, *The Best Way to the Sea's Riches?*, Christian Sci. Monitor, Apr. 10, 1978, at 19, col. 2. The Enterprise would contribute one-half the capital, appoint at least one-half the directors, and receive at least one-half the profits. *Id.* This proposal was not accepted.

5. U.N. Doc. A/Conf. 62/WP. 8/Rev. 1, *reprinted in* 5 UNCLOS III OR 125 (1976).

6. The procedure for negotiating at the 1977 Conference was basically the same as that for the 1976 Conference. Three separate Committees, based on regional representation, were formed to define the problems that faced each Committee and to propose solutions. *See Recent Developments*, *supra* note 1, at 720 n.7.

For the 1977 session, delegates agreed that the Chairman of each Committee would work closely with the President of UNCLOS III, who could offer his own ideas as to the provisions being negotiated. However, each Chairman was free to determine the "precise formulation" of the provisions to be incorporated into the new text. United Nations Third Conference on the Law of the Sea: Explanatory Memorandum on the Informal Composite Negotiating Text, U.N. Doc. A/Conf. 62/WP. 10/Add. 1, *reprinted in* 16 INT'L LEGAL MATERIALS 1099, 1100 (1977). This procedure later caused dissension, especially as to the seabed issue, with respect to differences between agreements reached in the First Committee and the text actually included in the successor document to the RSNT, the Informal Composite Negotiating Text (ICNT), U.N. Doc. A/Conf. 62/WP. 10, *reprinted in* 8 UNCLOS III OR 1, *and in* 16 INT'L LEGAL MATERIALS 1108 (1977).

7. Wash. Post, July 27, 1978, § A, at 18, col. 1.

sions to the RSNT.[8] The Evensen Text retained the "parallel system" proposed at the 1976 Conference by then United States Secretary of State Henry Kissinger. Under this compromise, a private or State-owned mining group would propose two identical areas of exploitation to the International Seabed Authority (ISA), which would have exclusive control over deep seabed mining. The proposal further would allow the ISA to have exclusive control over access to and development of the ocean floor.[9] One site would be mined by the Enterprise, the operating arm of the ISA, and the other by the private or State-owned consortium.[10] The Evensen Text, however, limited the discretion of the ISA to refuse contracts with mining companies.[11]

The issue of resource policy has been especially important to many of the mineral-producing members of the Group of 77,[12] which fear that seabed mining will hurt their own land-based mining industries. The Evensen Text is similar to the RSNT on this issue in that it recognizes the need to ensure the viability of the land-based producers. The amount of minerals to be mined by both the ISA and private mining companies is limited to sixty percent of the cumulative growth of the world market after seven years.[13]

The Evensen Text revised the organizational structure of the ISA and changed its voting procedure. It called for a chambered system of voting, a complicated procedure that would give the outnumbered developed States greater voting strength.[14] A new

8. The Evensen Text is reprinted at 2 FORSCHUNGSINSTITUT FÜR INTERNATIONALE POLITIK UND SICHERHEIT, STIFTUNG WISSENSCHAFT UND POLITIK, DOKUMENTE DER DRITTEN SEERECHTSKONFERENZ DER VEREINTEN NATIONEN—NEW YORKER SESSION 1977, at 420 (1977).

9. *See Recent Developments*, *supra* note 1, at 721.

10. *Id.*

11. Charney, *United States Interests in Convention on the Law on the Sea: The Case for Continued Efforts*, 11 VAND. J. TRANSNAT'L L. 39, 61 (1978) [hereinafter cited as *United States Convention Interests*]. When there is no conflict among applicants, the Evensen Text deems acceptance of a contract mandatory. Furthermore, the ISA must reject the contract within 60 days, or it will automatically be deemed approved. *Id.* at 72-73 app.

12. The Group of 77, a faction within UNCLOS III, is composed of more than 115 developing States of the Third World. Although not always unified on all issues, the Group generally views the issue of seabed mining as one that pits the developing against the developed States.

13. The RSNT limits nickel production in the first 25 years of the ISA's operation so as not to exceed the percentage increase in the projected world nickel market. The Evensen Text calls for limiting production for 20 years after 1980 to two-thirds of the projected world increase. *United States Convention Interests*, *supra* note 11, at 71 app.

14. The ISA contains two voting bodies, the Assembly and the Council. The Assembly is composed of all States that are parties to the treaty. It operates on the basis of one State, one vote, and is primarily concerned with general policy-making. *Law of the Sea Conference Status Report, Summer 1978: Hearing Before*

provision called for a review of the Enterprise every five years, with a basic review of the workings of the ISA to be convened at the end of twenty years.[15] The Evensen Text also proposed that the Sea-Bed Tribunal, created by the RSNT, be integrated into the Law of the Sea Tribunal, which would adjudicate disputes arising under the entire Convention.[16]

Finally, the United States proposed a plan for financing the Enterprise. Basically, this plan calls for member States to guarantee loans to the Enterprise based upon the percentage of their contributions to the United Nations.[17]

The Informal Composite Negotiating Text (ICNT),[18] released after the Sixth Session, represents the official UNCLOS position. It contains many provisions that are in neither the RSNT nor the Evensen Text.[19] The United States thinks that the ICNT in-

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the House Comm. on International Relations, 95th Cong., 2d Sess. 5 (1978) [hereinafter cited as *1978 Hearing*].

The Council deals more with the specifics of resource exploration and exploitation than with general policymaking. Hudson, *For a Law of the Seas*, CURRENT, Dec., 1977, at 44, 48-49. The United States and other developed States capable of seabed mining want the Council's composition to reflect "adequate protection to the major economic interests affected by the deep sea-bed mining provisions of a treaty." *1978 Hearing, supra* at 5.

15. *United States Convention Interests*, *supra* note 11, at 75 app.

16. A Seabed Disputes Chamber would be established within the Law of the Sea Tribunal. Note, *Law of the Sea—The Integration of the System of Settlement of Disputes under the Draft Convention as a Whole*, 72 AM. J. INT'L L. 84, 85 (1978). It would also prohibit the Tribunal from deciding upon rules and procedures adopted by the Assembly or the Council. *United States Convention Interests*, *supra* note 11, at 75 app.

This arrangement has been seen as a major contribution by developing States at UNCLOS III. Adede, *Law of the Sea—Developing Countries' Contribution to the Development of the Institutional Arrangements for the International Sea-bed Authority*, 4 BROOKLYN J. INT'L L. 1, 32-33 (1977). However, one author has claimed that this restriction contravenes "fundamental principles of United States administrative law." Pietrowski, *Hard Minerals on the Deep Ocean Floor: Implications for American Law and Policy*, 19 WM. & MARY L. REV. 43, 66 (1977).

17. The United States' share would be 25%. Wall St. J., June 14, 1977, at 23, col. 1.

18. Note 6 *supra*.

19. The ICNT was not finally released until several days after the official close of the Sixth Session. The portion of the ICNT that deals with the seabed mining issue was drafted under the chairmanship of Paul Engo of Cameroon. Elliot Richardson, United States Ambassador to UNCLOS III, charged that Engo and others were responsible for changing the final text and thus making it unacceptable to the United States. N.Y. Times, July 21, 1977, § 1, at 2, col. 1. *See also* note 39 and accompanying text *infra*.

For a concise interpretation of the ICNT on the issue of seabed mining, see Silkenat, *Solving the Problem of the Deep Seabed: The Informal Composite Negoti-*

creases the power of the ISA to accept or reject mining applications, thereby eliminating any reasonable assurance of access to mining sites.[20] The ICNT also sets more stringent limits on the production of minerals than did the Evensen Text[21] and eliminates the chambered voting system.[22] It retains the twenty-year review clause, but if the Conference failed after five years to reach an agreement on the workings of the parallel system, the parallel system would be be abolished.[23] Furthermore, the ICNT

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ating Text for the First Committee of UNCLOS III, 9 N.Y.U. J. INT'L L. & POL. 177 (1976).

20. Richardson, *Law of the Sea Conference: Problems and Progress*, 77 DEP'T ST. BULL. 389, 390 (1977). The ICNT can be read to give the ISA enough discretionary power to enable it to mandate that miners contract directly with the Enterprise rather than with the Council. *United States Convention Interests*, *supra* note 11, at 72 app. The Enterprise is not subject to a set of negotiating principles as is the Council.

Perhaps even more restrictive is Article 150 of the ICNT, which states that in any negotiations, the ISA must take into consideration "the protection of developing countries from any adverse effects on their economics." ICNT, *supra* note 6, art. 150. One commentator thinks that developing States would use this principle to limit the quantity of minerals mined. Pietrowski, *Hard Minerals on the Deep Ocean Floor: Implications for American Law and Policy*, 19 WM. & MARY L. REV. 43, 64 (1977).

Alternatives to the parallel system have been proposed. *See* La Que, *Different Approaches to International Regulation of Exploitation of Deep-Ocean Ferromanganese Nodules*, 15 SAN DIEGO L. REV. 477 (1978). La Que examines the different approaches and discusses their advantages and disadvantages to developing States. Another commentator has suggested a system similar to that used for land control. This system would be based on Transferable Exploitation Rights (TER's), which would be defined "in terms of permissible exploitation of presently discovered resources per unit of area." The ISA would allocate TER's to developed States or to private mining companies, based upon the creation of a world market. This plan has two advantages: The developing States would benefit immediately, and production would remain in the private sector. Note, *Transferable Exploitation Rights: An Allocation System for Oceans Resources*, 17 VA. J. INT'L L. 257, 274-75 (1977).

Another alternative is a European proposal that would retain the parallel system but would permit voluntary participation in mining operations by the Enterprise. Participation would be "limited to twenty percent in the case of first generation mine-sites and to fifty percent in the case of second generation sites." Conant & Conant, *Resource Development and the Seabed Regime of UNCLOS III: A Suggestion for Compromise*, 18 VA. J. INT'L L. 61, 66 (1977). Participation would entitle the Enterprise to benefits from and training in the use of the technology needed for exploitation. However, the Enterprise would be obliged to meet its share of the financing costs. Presumably, however, it could be financed by an institute such as the World Bank. *Id.*

21. Article 150 of the ICNT states: "After the first seven years of the interim period total production of minerals from nodules in the Area shall on a yearly basis not exceed 60 percent of the cumulative growth segment of the world nickel demand . . . ." ICNT, *supra* note 6, art. 150(1)(g)(B)(i).

22. Voting by the Council and the Assembly is based on a one-State, one-vote principle. *Id.* art. 159(6). Substantive questions in the Council require a three-fourths majority; procedural matters require only a simple majority. *Id.* art. 159(7). In the Assembly, substantive issues require a two-thirds majority, while procedural issues require only a simple majority. *Id.* art. 157(6)-(7).

23. *Id.* art. 153(6).

provides that the ISA may require a mining interest to transfer its technology to the Enterprise as a precondition to contracting.[24] Surprisingly, scientific research in the high seas arguably comes under the control of the ISA[25] even though this issue was not to be resolved by the First Committee. The Committee's failure to resolve the seabed mining issue led to a call for reevaluating United States participation in future UNCLOS negotiations.[26]

The Second Committee dealt with the problem of jurisdiction within the 200-mile exclusive economic zone (EEZ) and the high seas. The ICNT, like the RSNT, proposes a twelve-mile territorial sea and transit rights through the various ocean straits.[27] The Committee made substantial progress in formulating different degrees of jurisdiction over ocean waters. The areas covered by the ICNT include internal waters, territorial sea, contiguous zone, EEZ, continental shelf extending beyond 200 miles, and high seas.[28] The resolution of access to the EEZ by neighboring

24. *Id.* art. 151(2)(ii), 8(b); *id.* Annex II, arts. 4-5.

25. *Id.* arts. 143, 151(7). Because of this provision and others in Committee III, many ocean scientists in the United States have recommended that the United States not accept the UNCLOS provisions on this issue. *Ocean Scientists May Wash Hands of Sea Law Treaty*, 197 SCI. 645 (1977).

26. At a press conference, Elliot Richardson stated that because of a lack of satisfactory progress on the seabed issue, he would recommend that the Carter administration "undertake a most serious and searching review of both the substance and procedures of the conference." Wall St. J., July 21, 1977, at 14, col. 2.

Mr. Richardson found four other aspects of the ICNT unacceptable: the ISA authority to force joint ventures as a precondition for access, the ICNT ambiguity on the financial investment required of mining concerns, the ISA regulation of the production of other minerals, and the ISA distribution of the benefits to States that are not parties to the convention. Richardson, *Law of the Sea Conference: Problems and Progress*, 77 DEP'T ST. BULL. 389, 390-91 (1977).

27. ICNT, *supra* note 6, arts. 3, 37-44. The right of transit passage has been a major concern for naval powers that maintain nuclear submarine fleets, such as the United States and the Soviet Union. Under the right of innocent passage, as applied in territorial waters, a submarine would have to surface while crossing a strait if the strait were within a State's 12-mile limit. *1978 Hearing*, *supra* note 14, at 4-7.

28. Internal waters are those "waters on the landward side of the baseline of the territorial sea." ICNT, *supra* note 6, art. 8(1). The ICNT provides for no right to innocent passage unless such waters have not previously been considered internal. *Id.* art. 8(2). Thus, Chesapeake and San Francisco Bays qualify as internal waters. Hudson, *The International Struggle for a Law of the Sea*, BULL. ATOM. SCIENTISTS, Dec., 1977, at 14, 16. The territorial sea is 12 miles from the baseline. Only the right of innocent passage through these waters exists. ICNT, *supra* arts. 3, 17. The contiguous zone runs from 12 to 24 miles from the baseline. Here the coastal State may exercise control of "its customs, fiscal, immigration or sanitary regulations." *Id.* art. 33. The EEZ extends from the end of the 12-mile territorial sea to 200 miles from the baseline. *Id.* art. 57. Within the EEZ "the coastal state

coastal States remained unresolved,[29] as did the right of access by landlocked States to the sea.[30]

The Third Committee dealt with the issues of pollution and of scientific research. The ICNT grants States the right to enact laws preventing pollution from foreign ships within their territorial seas.[31] The main problem confronting the Committee was the issue of marine research within a State's EEZ.[32] The Committee

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[shall have] sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the seabed and subsoil and the superjacent waters." *Id.* art. 56(1)(a).

The coastal State would control fishing within the EEZ. *Id.* art. 61. Scientific research would also be affected within this zone. *Id.* art. 56(1)(b)(ii). For a discussion of the issues relating to scientific research, see text accompanying notes 32-37 *infra*. Control of pollution is also within the jurisdiction of the territorial State, "although states would be expected to cooperate with international and regional bodies." Hudson, *supra*. The right of transit in the high seas is retained within the EEZ. ICNT, *supra* art. 58.

The continental shelf jurisdiction allows a coastal State to have exploitation rights over the shelf either to an area 200 miles out or to areas that "extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin." *Id.* art. 76. The end of this margin is not defined. However, various formulae have been proposed. *See* note 57 *infra*.

After 10 years, States that do exploit the shelf beyond the 200-mile limit shall contribute five percent of their earnings annually to the ISA. ICNT, *supra* art. 82(2). The ISA will then distribute such earnings on an equitable basis to developing States. *Id.* art. 82(4). This situation was viewed as a tradeoff between States with large continental margins (generally the developed States such as the United States) and the developing States. Hudson, *supra*. No Article in the ICNT requires States to contribute from resources *within* the economic zone. However, such a proposal has been made. The proposal is known as the "Barba Negro" formula, named after the ship upon which many of the delegates met to discuss the matter. *See* Logue, *Carter's Ocean Opportunity*, 104 COMMONWEAL 265, 268 (1977).

29. ICNT, *supra* note 6, art. 74.

30. *Id.* art. 125. The specific agreements between landlocked States and transit States are left to negotiations. *Id.* art. 125(2). Thus, it remains unclear whether landlocked and geographically disadvantaged States (LL/GDS) should be given access as a matter of right rather than of license. No customs or taxes are to be charged, "except charges levied for specific services rendered in connexion with such traffic." *Id.* art. 127(1). However, no requirement exists for the transit State to provide special port areas for use by the LL States. *Id.* arts. 128-129.

Little progress was made as to the rights of the LL/GDS to the resources within the EEZ. *See* Jayakumar, *The Issue of the Rights of Landlocked and Geographically Disadvantaged States in the Living Resources of the Economic Zone*, 18 VA. J. INT'L L. 69 (1977).

31. ICNT, *supra* note 6, art. 221. This provision complies with the Carter administration's goal to prevent pollution within American territorial waters. Richardson, *Law of the Sea Conference: Problems and Progress*, 77 DEP'T ST. BULL. 389, 390 (1977).

However, one commentator criticizes the ICNT on the grounds that it hampers the coastal State from taking effective measures against pollution within its own EEZ. Schneider, *Something Old, Something New: Some Thoughts on Grotius and the Marine Environment*, 18 VA. J. INT'L L. 147 (1977).

32. The area encompassed by the 200-mile EEZ is of major importance to oceanographers because they conduct research within it. This fact explains the

made progress on this problem by easing the restrictions that the RSNT had imposed. Freedom to publish scientific data became less restrictive,[33] although the ICNT imposes upon the researcher the duty to notify the coastal State of the proposed exploration and to obtain its consent.[34] The coastal State, however, is under a duty to consent.[35] Thus, if the coastal State does not respond within six months after being notified and asked for permission, it is presumed to have impliedly consented.[36] The United States generally favors these ICNT provisions.[37]

Seventh Session of UNCLOS III

The Seventh Session of UNCLOS III met in Geneva from March 28 to May 19, 1978, and in New York City from August 21 to September 15, 1978.[38] The ICNT, drafted during the Sixth Session, served as the basis for negotiations. The delegates immediately agreed that unilateral modification of the text would be forbidden.

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cynicism displayed by ocean scientists toward the UNCLOS III texts allowing strict coastal State control over oceanographic activity. Ocean Policy Committee of the Commission on International Relations NAS-NRC, *The Marine Scientific Research Issue in the Law of the Sea Negotiations*, 197 SCI. 230 (1977). In 1976 approximately half the planned explorations by oceanographers were cancelled because of insufficient cooperation from the coastal State whose waters were to be explored. Cowen, *Ocean Science in Peril*, Christian Sci. Monitor, June 8, 1977, at 29, col. 14.

33. While the RSNT held that coastal State consent should be given for research other than that involving economic exploration, it did contain statements that may have placed a restraint on publication of scientific data from such research. Oxman, *The Third United Nations' Conference on the Law of the Sea: The 1977 New York Session*, 72 AM. J. INT'L L. 57, 77 (1978).

34. ICNT, *supra* note 6, art. 246.

35. *Id.* art. 247(3). This Article outlines the circumstances under which a coastal State may deny consent. These circumstances include areas of environmental and economic concern and instances in which a researcher provides inaccurate information. This provision may be read to limit discretionary abuse by coastal States. Oxman, *The Third United Nations' Conference on the Law of the Sea: The 1977 New York Session*, 72 AM. J. INT'L L. 57, 76 (1978).

36. ICNT, *supra* note 6, art. 253.

37. Richardson, *Law of the Sea Conference: Problems and Progress*, 77 DEP'T ST. BULL. 389, 389-90 (1977).

38. At the outset the Conference seemed on the verge of collapse over retention of the President of UNCLOS, Hamilton Shirley Amerasinghe of Sri Lanka. Latin American States believed that he favored the LL States in their struggle to obtain resource rights in the EEZ. Wash. Post, Mar. 29, 1978, § A, at 21, col. 1. These States also contended that because Amerasinghe was replaced by his government as ambassador to UNCLOS III, it would be a poor precedent to allow him to remain in a personal capacity. Wall St. J., Apr. 7, 1978, at 14, col. 2. This issue was eventually decided in Amerasinghe's favor.

To avoid the problem of rewriting the text that occurred in the Sixth Session, the delegates decided that the Committee chairpersons would not be allowed to alter the text without the consensus of all participating delegates.[39]

The First Committee's[40] proposed revisions to the ICNT remain similar to the original ICNT with regard to mining-area access although a major change occurred on the issue of production control.[41] The United States came to an agreement with Canada, a leading producer of nickel, on fixed-production controls.[42] The production ceiling is to be calculated based upon a more extensive set of variables than was the case with the ICNT.[43] The figures for limiting production remain essentially the same.[44]

Substantial progress took place in the area of technology transfer. The proposed new provisions to the ICNT state that technology transfer is no longer a condition of contracting. However, a

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39. The members agreed to the following procedural rule:

> Any modifications or revisions to be made in the Informal Composite Negotiating Text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus.

1978 Hearing, *supra* note 14, at 17. *See* note 19 *supra*.

40. The First Committee was divided into three negotiating groups. The first group dealt with the system of exploration and exploitation, the second with financial arrangements, and the third with the organs of the ISA. *Id.* at 2.

41. However, the language in Article 150 is changed to reflect that the policies of the Enterprise, especially with regard to protecting developing States, are "objectives rather than mandates and [help] avoid the implication that the Article confers any power on the [ISA] other than those contained in other treaty articles." *Id.* at 27.

Certain delegates have suggested that each State be allowed a limited number of sites for its mining representatives. However, the United States takes the position that the problem can be resolved "without imposing any artificial restrictions on who can apply." Richardson, *Introduction*, 16 SAN DIEGO L. REV. 451, 454 (1979).

At the New York Session, the United States moved to require that well-delineated rules governing the selection of applicants be formulated and that the miners receive adequate protection. Particularly, the United States advocated the position that recovery of the minerals confers title to them. The Committee did not come to a final agreement on this issue. United States Delegation Report on the Resumed Seventh Session of the Third United Nations Conference on Law of the Sea, New York, August 21-September 15, 1978, at 7-9 (unpublished report) (on file with the *San Diego Law Review*) [hereinafter cited as United States Delegation Report].

42. Unofficially, the United States represented the developed States' interest, while Canada, as a mineral producer, represented the developing States. Christian Sci. Monitor, May 12, 1978, at 30, col. 2.

43. *1978 Hearing*, *supra* note 14, at 28. Furthermore, it was agreed that any limitation on minerals other than the nodule type would "be subject to the procedures set forth in the Convention for entry into force of amendments." *Id.* at 27.

44. *Law of the Sea: Hearing Before the Subcomm. on Arms Control, Oceans and International Environment of the Senate Comm. on Foreign Relations*, 95th Cong., 2d Sess. 65 (1978).

mining company, after it enters into a contract with the ISA, must transfer its technology to the Enterprise upon request. The transfer would be based on "good faith on reasonable commercial terms and conditions, which are to be negotiated by the parties."[45] Fewer restrictions were placed on scientific research in the seabed areas.[46]

The revisions provide for two methods of distributing income gained from mining nodules—a royalty-only plan and a nominal royalty plus profit-sharing plan. Both plans were included to enable each contractor to choose whichever plan best fits its socio-economic system.[47] Mining representatives who think their investment would not be adequately protected remained disappointed with these results.[48]

Finally, the First Committee reached no consensus on changes in the voting procedures for the ISA.[49] The reviewing clause of the ICNT was revised to eliminate any "automatic conversion" to

45. *1978 Hearing*, *supra* note 14, at 18. Presumably, these terms and conditions would represent market value. *Id.* at 26.

46. The new provision "eliminates the former mandate of the [ISA] to 'harmonize' and 'coordinate' such research." *Id.* at 19 (quoting ICNT, *supra* note 6, art. 143).

47. *Id.* at 31-32. The Soviet Union is the primary supporter of the royalty-only plan. The United States supports the profit-sharing plan in order to ensure risk sharing. *Id.*

At the New York Session this proposal was somewhat revised. By partially incorporating proposals made by Norway and Holland, the Committee formulated a new plan which provides for an annual fixed fee of one million dollars and for royalty percentage figures for both systems. The royalty percentage figure increases with time. A "safeguard" clause, which allows the contractor to stay within the earlier royalty figure until he can recoup his costs, and a provision for a 15% rate of return are also undecided. United States Delegation Report, *supra* note 41, at 11-13.

The United States has criticized this plan on three grounds. First, increasing the quota based upon time assumes that as time goes on, the operation will become more profitable. This may or may not be the case. Second, an annual fixed fee does not increase the incentive of a mining concern to be more fiscally responsible because it already will have invested millions of dollars. Finally, the uncertainties of seabed mining preclude predicting a rate of return. *Id.* at 11-14.

48. Representatives of the ocean mining industry met in Geneva shortly after the Conference ended in order to assess its progress. The representatives found the results to be unacceptable. S. REP. No. 1125, 95th Cong., 2d Sess. 47 (1978). For a report on the views of the mining companies' representatives, see *Law of the Sea: Hearing Before the Subcomm. on Arms Control, Oceans and International Environment of the Senate Comm. on Foreign Relations*, 95th Cong., 2d Sess. (1978).

49. *1978 Hearing*, *supra* note 14, at 54-55. The developing States did not accept the United States' proposal for chambered voting. *Id.* at 33-34.

a unitary system.[50] The revisions provide that if the Conference is deadlocked on the operation of the parallel system after five years, a moratorium on all new contracts shall be imposed.[51]

The Second Committee met with substantial success on the issue of compulsory settlement of disputes within the EEZ, the sole issue on which the delegates reached a final consensus.[52] The main area of contention was between coastal States with substantial fishing interests within their EEZ's and States whose fleets must fish in foreign waters. The dispute specifically centered on whether there should be a compulsory conciliation or a binding settlement to decide fishing disputes.[53] The result was a compromise which calls upon a coastal State to accept compulsory conciliation when it has failed in its conservation efforts and has acted arbitrarily in denying other States fishing rights within its EEZ.[54]

The Second Committee made progress on the problem of access to the EEZ by the landlocked and geographically disadvantaged States (LL/GDS). These States succeeded in obtaining the right to "an appropriate part of the surplus" within the EEZ, although no specific amounts were established.[55] A differentiation was made in terms of right of access between the developed and developing LL/GDS, with the latter gaining preference.[56]

Committee members proposed many plans for defining the outer limit of the continental margin, but none were accepted.[57]

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50. *Id.* at 29.

51. *Id.*

52. London Times, May 22, 1978, at 4, col. F. However, India, Indonesia, and Thailand, concerned at the delay of negotiations, have already agreed to divide a portion of the Andaman Sea Floor. San Diego Union, June 23, 1978, § A, at 22, col. 4.

53. "A binding procedure is one in which both parties are obliged to accept and act upon the decision of a neutral third party. Compulsory conciliation in the context of the present negotiations is a procedure akin to arbitration except that the result would not bind the parties absolutely." *1978 Hearing*, *supra* note 14, at 41.

54. While the arbitrary settlement procedures were not selected, to the disappointment of the LL/GDS, the revision did provide for expanding jurisdiction over coastal State actions. However, because it must be an abuse by a coastal State that brings jurisdiction into play, "the text ensures that a coastal state which exercises its powers responsibly cannot be harrassed by disgruntled fishing states." *Id.* at 42-43.

55. *Id.* at 36.

56. *Id.* at 37.

57. The two basic proposals were the "Irish formula" and one introduced by the Soviet Union and supported by the Eastern European States. The "Irish formula" called for delimitation beyond the 200-mile zone at the "base of the continental slope plus a minimum of 60 miles or, alternatively, the base of the continental slope and beyond to where the depth of sediments are at least one percent of the distance between that point and the foot of the slope." *Id.* at 38. The Soviet proposal would delimit at a maximum of 100 miles beyond the 200-mile zone. The

A United States proposal to provide greater protection for marine mammals received considerable attention, although the Committee did not act upon it.[58]

The Third Committee made substantial progress on the issue of ocean pollution. As a result of the *Amoco Cadiz* oil-spill disaster,[59] the United States proposed the establishment of a tanker route and warning system to avoid tanker collisions. The Committee tentatively agreed to accept this proposal.[60] The Committee further agreed upon proposals to allow a coastal State to arrest a vessel within its EEZ "where there is clear objective evidence that a violation . . . has resulted in a discharge which causes major damage or threat of damage."[61] Also, the Commit-

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United States opposed the Soviet plan, fearing that it would ultimately lead to a 300-mile EEZ. *Id.*

For a discussion of the different methods used in measuring the continental margins, *see* Hedberg, *Relations of Political Boundaries on the Ocean Floor to the Continental Margin*, 17 VA. J. INT'L L. 57 (1976). Professor Hedberg favors the Irish plan's use of the baseline slope plus an agreed-upon oceanward extension. *Id.* at 63.

One dispute regarding the continental shelf delimitation between States has been resolved. In July, 1977, an international arbitration tribunal in Geneva decided the Anglo-French Continental Shelf Case. Britain had claimed that the continental shelf between the two States should be divided using an equidistant method measured from certain British-held islands off the coast of Britain. France claimed that using this method would be unfair because the coastlines should be used. The Tribunal used a geometric formula that gave France more shelf area than it would have received had the equidistance method been used. However, the Tribunal also increased the shelf limitation for those British islands beyond what Britain would have been received under the French proposal. Wash. Post, July 26, 1977, § A, at 14, col. 5.

The Tribunal rested its decision upon principles of equity, an important concept in the development of international law. It also noted that application of the delimitation provisions as proposed at UNCLOS III would have resulted in the same solution. Note, *The United Kingdom-France Continental Shelf Arbitration*, 72 AM. J. INT'L L. 95, 111 (1978).

For a comprehensive discussion of this case, see Brown, *The* Anglo-French Continental Shelf Case, 16 SAN DIEGO L. REV. 461 (1979).

58. United States Delegation Report, *supra* note 41, at 20.

59. In March, 1978, the supertanker *Amoco Cadiz* sank off the coast of Brittany. It was "potentially the worst ecological disaster ever to hit the European coast." NEWSWEEK, Mar. 27, 1978, at 71.

60. London Times, May 22, 1978, at 4, col. F.

61. *1978 Hearing*, *supra* note 14, at 47. This provision goes beyond the ICNT, which imposed only monetary fines on polluting vessels beyond the territorial waters. *Id.*

At the New York Session, the Committee agreed to allow a coastal State to inspect within its EEZ "when there is a substantial discharge causing a threat of significant pollution and the master has refused to supply information or the information supplied is at variance with evident facts." United States Delegation

tee agreed that a State can determine whether a vessel within its territorial sea meets the requirements for port entry of the State for which it is heading provided that both States are parties to the agreement.[62] No significant developments transpired on the issue of scientific research within the EEZ.

An Eighth Session of UNCLOS III is scheduled to meet in Geneva for six weeks in March, 1979. The potential for its success is as yet uncertain. However, although many issues remain to be resolved, sufficient agreement on most issues has, according to Elliot Richardson, created "a sufficient incentive for us to strive for the completion of a Law of the Sea Convention."[63]

DEVELOPMENTS BEYOND THE CONFERENCE

Deep Seabed Mining Legislation Makes Substantial Progress in Congress

Legislation governing the exploration and exploitation of seabed minerals by American mining companies was introduced in the 95th session of the United States Congress. The Carter administration, unlike previous administrations, supports this type of legislation,[64] partly in the hope of forcing an accommodation at UNCLOS III. However, such legislation will not be fully acted upon until the 96th session of Congress meets in 1979.

Report, *supra* note 41, at 22. The Committee also agreed to greater protection for flag States "by ensuring prompt notification to flag states where release of a vessel has been refused or made conditional along with a reference to the right to seek release in accordance with the dispute settlement articles." *Id.* at 22-23.

The United States has already taken unilateral action on this measure. On December 27, 1977, a bill was passed by Congress and signed by President Carter which asserts American jurisdiction over polluting violators within its EEZ. Clean Water Act of 1977, Pub. L. No. 95-217, § 58, 91 Stat. 1566. However, passage of the bill prompted a split within the Carter administration over enforcement of the Act. The State Department thinks that enforcement of the law will hamper prospects for agreement at UNCLOS III. Furthermore, it may lead other States to increase their degree of jurisdiction over their own EEZ, thus hindering United States naval and intelligence activities. *See* N.Y. Times, Jan. 7, 1978, § 1, at 14, col. 2. However, the State Department reached agreement with the Environmental Protection Agency (EPA), the United States agency responsible for enforcement of the new law. The EPA agreed to support changes in the law to allow accommodation for international agreements and to penalize foreign vessels within the American EEZ only after they have docked at a United States port. *Id.* Jan. 8, 1978, § 1, at 20, col. 1.

62. *1978 Hearing*, *supra* note 14, at 47-48.

63. Richardson, *Introduction*, 16 SAN DIEGO L. REV. 451, 459 (1979).

64. Wall St. J., Oct. 5, 1977, at 16, col. 3. For an in-depth discussion of United States interests in seabed mining, especially in regard to available resources, the need for new resources, and the history of American involvement in this issue at UNCLOS, see SCIENCE POLICY RESEARCH, FOREIGN AFFAIRS AND NATIONAL DEFENSE, AND ECONOMICS DIVISIONS, CONGRESSIONAL RESEARCH SERVICE, 95TH CONG., 2D SESS., DEEP SEABED MINERALS: RESOURCES, DIPLOMACY, AND STRATEGIC INTEREST (Comm. Print 1978).

The primary bill passed by the House and sent to the Senate, H.R. 3350 (Breaux bill),[65] set forth a comprehensive management scheme. The Breaux bill made clear that the United States, by enacting such legislation, would not be asserting any "sovereignty or sovereign *or exclusive* rights over, or the ownership of, any area of the deep seabed.[66] Furthermore, the bill set up an international revenue-sharing fund for underdeveloped States.[67]

Under this bill, the Commerce Department would have authority to regulate mining operations.[68] All potential miners would be required to meet certain requisites before obtaining a mandatory license for exploration and a mandatory permit for commercial recovery.[69] The bill provided that licenses would be issued not only

65. 95th Cong., 2d Sess. (1978). *See Deep Seabed Hard Mineral Resources Act: Hearings and Markup on H.R. 3350 Before the Comm. on International Relations and its Subcomms. on International Organizations and on International Economic Policy and Trade*, 95th Cong., 2d Sess. 219 (1978) [hereinafter cited as *Hearings on H.R. 3350*]. The bill first went before the House Committee on Merchant Marine and Fisheries. H.R. REP. No. 588 pt. 1, 95th Cong., 1st Sess. (1977). It was then sent to the House Committee on Interior and Insular Affairs, which amended it. *See id.* pt. 2. Before the entire House acted upon the bill, it was sent to the House Committee on International Relations. The House passed the bill; however, the Senate, pressed for time near the end of its legislative session, failed to consider it. Congressman Murphy, the Chairman of the House Merchant Marine and Fisheries Committee, considers the probability of passage in the 96th Congress very high. Murphy, *The Politics of Manganese Nodules: International Considerations and Domestic Legislation*, 16 SAN DIEGO L. REV. 531, 552 (1979). *See id.* at 550-52.

The other major bill designed to create a comprehensive plan for management and control of seabed mining was H.R. 3652, 95th Cong., 2d Sess. (1977) (known as the Fraser bill). Although the House did not act upon the Fraser bill, many of its provisions were included in the final version of the Breaux bill. For a detailed comparison of the two bills, *see* Ott, *An Analysis of Deep Seabed Mining Legislation*, 10 NAT. RESOURCES LAW. 591 (1977); Whitney, *Environmental Regulation of United States Deep Seabed Mining*, 19 WM. & MARY L. REV. 77, 82-92 (1977).

66. *Hearings on H.R. 3350*, *supra* note 65, at 305 (emphasis original). However, other Congressmen find this to be contradictory to the concept of the "Common Heritage of Mankind" that the United Nations adopted in 1967. This principle states that the ocean and its resources are to be shared equitably to benefit all States. Wash. Post, July 27, 1978, § A, at 18, col. 1.

67. *Hearings on H.R. 3350*, *supra* note 65, at 337. This provision was an amendment added to indicate further United States support of UNCLOS III negotiations. H.R. REP. No. 588 pt. 3, 95th Cong., 2d Sess. 17-18 (1978).

68. H.R. REP. No. 588 pt. 3, 95th Cong., 2d Sess. 32 (1978). Some House members contested this issue because they thought the Interior Department should have jurisdiction. Wash. Post, July 27, 1978, § A, at 18, col. 1. The Senate version of the Breaux bill designated the Secretary of the Interior to review applications and to issue permits and licenses. S. REP. No. 1125, 95th Cong., 2d Sess. 64-65 (1978).

69. *Hearings on H.R. 3350*, *supra* note 65, at 98-99. The licensing requirements were that miners be financially solvent, that their activities not interfere with the freedom of the high seas, that the issuance of such a license or permit not conflict

to ships documented under United States laws but also to those of reciprocating States.[70] It recognized reciprocity with other States that regulate their nationals in the same manner as under the bill.[71] Processing of the minerals might take place only where the Secretary of Commerce designated.[72] The bill also would require the Secretary to prepare an environmental impact statement as to the effect of mining on the deep seabed floor.[73]

One issue extensively debated in Congress was that of investment guarantees for mining companies in the event that a ratified treaty caused them financial loss. The final bill passed by the House and the version sent to the Senate did not provide for such guarantees.[74]

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with international obligations, and that the miners cause no threat of damage to the marine ecosystem. Ott, *An Analysis of Deep Seabed Mining Legislation*, 10 NAT. RESOURCES LAW. 591, 598 (1977).

The bill also contained a "grandfather" clause for United States mining companies engaged in exploitation at the time the Act would have taken effect. *Hearings on H.R. 3350, supra* at 305-06. This clause would have "allow[ed] those citizens to continue their exploration activities until the Secretary ha[d] taken action on their application for license." H.R. REP. No. 588 pt. 2, 95th Cong., 1st Sess. 21 (1977). This clause was viewed as necessary because the ICNT contains no guaranty of investments for mining companies that will have begun to explore and exploit when the ICNT becomes effective. BUS. WEEK, Oct. 9, 1978, at 83, 83.

It is estimated that the initial investment to begin a mining operation is $500 to $700 million. BUS. WEEK, July 11, 1977, at 29, 29.

70. *Hearings on H.R. 3350, supra* note 65, at 310. The Senate bill, S. 2053, 95th Cong., 1st Sess. (1977), was at odds with the House version on this issue. Under the Senate bill, both mining and processing ships would have had to have been documented and built in the United States. The Senate Committee thought this requirement would help shipyard construction in the United States. S. REP. No. 1125, 95th Cong., 2d Sess. 99 (1978). However, Senator Griffin (R.-Mich.) strongly dissented from the Committee's position, viewing the provision as a "new version of cargo preference" created by the lobbying efforts of the maritime industry. *Id.* at 130. The administration opposes flag requirements for ore-transporting vessels. Richardson, *Deep Seabed Mining Legislation*, DEP'T ST. BULL., Apr., 1978 at 54.

71. *Hearings on H.R. 3350, supra* note 65, at 332-33.

72. H.R. REP. No. 588 pt. 3, 95th Cong., 2d Sess. 14 (1978).

73. *Id.* pt. 1, 95th Cong., 1st Sess. 7 (1977). The ecological problems that deep seabed mining creates remain unclear, but because the nodules are located so deep in the ocean, little marine life exists to be disturbed. Slappey, *Who Will Reap the Mineral Riches of the Deep?*, NATION'S BUS., Mar., 1978, at 25, 32. However, mining might substantially damage the ocean food chain. Leach & Prescott, *Mining the Sea: Phase I*, ATLAS, Apr., 1978, at 25, 26.

74. Wall St. J., Aug. 11, 1978, at 6, col. 1; Wash. Post, July 27, 1978, § A, at 18, col. 1. Originally, H.R. 3350 provided no limit on the amount of compensation available to the mining industry. The Fraser bill (H.R. 3652) created an insurance scheme that involved coverage of up to $100 million. Ott, *An Analysis of Deep Seabed Mining Legislation*, 10 NAT. RESOURCES LAW. 591, 602-03 (1977). The revised version, which came out of the House Committee on Merchant Marine and Fisheries, allowed a company to be compensated for the lesser of 90% of its investment or $350 million. H.R. REP. No. 588 pt. 1, 95th Cong., 1st Sess. 51 (1977).

The Carter administration strongly opposed such guarantees on the grounds that the "Federal Government should not provide the precedent of promising in advance to compensate certain segments of the private sector for financial losses

States Continue to Adjust to the Unilateral Extension of Sovereignty over Fishing Waters

States have continued to declare sovereignty over waters extending 200 miles from their shores.[75] These States, with the exception of North Korea, have claimed this extension for economic purposes only, primarily fishing.[76] These States include Haiti,[77] East Germany,[78] Sweden,[79] Poland,[80] Japan,[81] Cuba,[82] and several South Pacific States.[83] Iceland continued to refuse Britain access

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that may be occasioned by possible federal actions taken to advance the national interest." Richardson, *Deep Seabed Mining Legislation*, DEP'T ST. BULL., Apr., 1978, at 54, 54.

75. For a discussion of States that declared such sovereignty prior to April, 1977, *see Recent Developments*, *supra* note 1, at 724-28.

76. On August 1, 1977, North Korea declared a "military sea boundary" 50 miles from its shore. North Korea claimed control over all ships and aircraft in that area. The United States has refused to recognize such sovereignty. Wash. Post, Aug. 3, 1977, § A, at 15, col. 1.

77. N.Y. Times, Apr. 17, 1977, § A, at 29, col. 6.

78. *Id.* Dec. 28, 1977, § A, at 4, col. 4.

79. *Id.*

80. *Id.*

81. On June 15, 1977, the Japanese cabinet ratified a law passed by the Diet, Japan's parliament, that increased Japanese territorial waters from 3 to 12 miles and its fishing zone to 200 miles. N.Y. Times, June 15, 1977, § A, at 12, col. 3. Prior to enactment of the law, Japanese officials informed both the People's Republic of China and South Korea that this law would not be enforced against them if they would extend a similar privilege to Japan. *Id.* Mar. 30, 1977, § A, at 5, col. 1.

On May 24, 1977, Japan and the Soviet Union reached a temporary agreement allowing each State to fish within the other's EEZ. L.A. Times, May 25, 1977, pt. 1, at 17, col. 1. This agreement was extended for another year until December, 1977, retaining the 1977 quotas. N.Y. Times, Dec. 22, 1977, § A, at 10, col. 2.

82. N.Y. Times, Apr. 29, 1977, § A, at 1, col. 6.

83. These States and territories include Australia, New Zealand, the Cook Islands, Papua, New Guinea, Fiji, Nauru, Tonga, Western Samoa, Niue, and the Gilbert Islands. Christian Sci. Monitor, Apr. 13, 1978, at 11, col. 1.

All these countries are members of the regional South Pacific Forum. The Forum has established the Pacific Regional Fisheries Agency to administer the 200-mile zone among the members. The Agency will also negotiate with foreign fishing States in regard to licensing procedures. N.Y. Times, Oct. 6, 1977, § A, at 14, col. 3. Foreign States have already begun to show interest in developing joint ventures and in providing loans and other economic assistance to the Agency. Christian Sci. Monitor, Apr. 3, 1978, at 11, col. 1.

The Agency has invited both France and the United States to join the Agency because both have territorial possessions in the area. However, American law does not recognize State sovereignty over highly migratory species of fish such as tuna, which is abundant in this South Pacific area. Christian Sci. Monitor, Apr. 12, 1978, at 11, col. 1. A further problem is that current United States law would have to be changed to allow American Samoa, a United States possession, to join the Agency. *Id.* Sept. 29, 1977, at 26, col. 1.

The establishment of this Agency is in agreement with one commentator's rec-

to its fishing waters,[84] and Ireland failed in its attempt to establish a totally exclusive fishing zone.[85]

The United States encountered many problems posed by passage of the Fishery Conservation and Management Act of 1976 (FCMA).[86] These problems included violations within American fishing waters, readjustment of fishing boundaries between the United States and other States, foreign influence in the American fishing industry, and the determination of quota allocations. While most States complied with the provisions of this Act,[87]

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ommendation for such a program. This commentator sets forth the benefits that these States will derive from a united organization representing their interests. The author notes finally that this type of organization goes further than anything established in the ICNT because it protects the interests of self-governing territories that are part of the Agency. These territories cannot be a party to the ICNT. Ramp, *Regional Law of the Sea: A Proposal for the Pacific*, 18 VA. J. INT'L L. 121 (1977).

84. British ships were banned from Iceland's fishery zone as of January 1, 1977. *See Recent Developments*, *supra* note 1, at 729-30. Although Iceland agreed to meet with representatives of the European Economic Community (EEC) in an attempt to work out an agreement, the meetings were fruitless. An explanation may be that Iceland's fishery waters contain more fish than the EEC waters. London Times, June 11, 1977, at 3, col. H.

85. Ireland had announced that it would create an exclusive fishery zone 50 to 100 miles outward. It banned large-sized boats from its water, giving its small-boat fishing fleet a monopoly in the area. London Times, Apr. 2, 1977, at 2, col. G. However, the European Court of Justice declared the ban "discriminatory and in breach of the [EEC] treaty." This ruling is expected to strengthen considerably the EEC's power to act against excessive restrictions imposed by member States. *Id.* Feb. 17, 1978, at 5, col. F. Both Britain and Ireland had strongly favored such restrictions because a large portion of EEC fisheries is in those waters. *Id.* May 12, 1977, at 7, col. E.

86. 16 U.S.C. §§ 1801-1882 (1976), *as amended by* Act of Aug. 28, 1978, Pub. L. No. 95-354, 92 Stat. 519. For a discussion of the provisions of the Act, *see Recent Developments*, *supra* note 1, at 727-29. In 1977 foreign fishing within the United States' 200-mile limit declined by 35%. Wall St. J., Feb. 27, 1978, at 8, col. 4.

87. In 1978, foreign States will pay the United States approximately $10.1 million in fishing fees, of which Japan's share will be the greatest. Wall St. J., Feb. 16, 1978, at 1, col. 5. Agreements have been drafted between the United States and several other States regarding their rights within the 200-mile American zone. An agreement between the United States and the EEC was reached on February 15, 1977. Agreement Concerning Fisheries Off the Coasts of the United States, Feb. 15, 1977, United States-European Economic Community, [1976-77] 28 U.S.T. 3787, T.I.A.S. No. 8598; H.R. Doc. No. 80, 95th Cong., 1st Sess. 1 (1977). The EEC was criticized for not taking a strong enough position when negotiating with the United States, particularly with respect to purportedly excessive fees sought by the United States. L.A. Times, May 15, 1977, pt. 6, at 17, col. 1.

The United States signed an agreement with Japan on March 18, 1977, Agreement Concerning Fisheries Off the Coasts of the United States, Mar. 18, 1977, United States-Japan, T.I.A.S. No. 8728; H.R. Doc. No. 79, 95th Cong., 1st Sess. 3 (1977), with the Soviet Union on November 26, 1976, Agreement Concerning Fisheries Off the Coasts of the United States, Nov. 26, 1976, United States-Union of Soviet Socialist Republics, [1976-77] 28 U.S.T. 1847, T.I.A.S. No. 8528; H.R. Doc. No. 36, 95th Cong., 1st Sess. 3 (1977), and with Mexico on August 26, 1977, Agreement Concerning Fisheries Off the Coasts of the United States, Aug. 26, 1977, United States-Mexico, T.I.A.S. No. 8852; 123 CONG. REC. S16,712 (daily ed. Oct. 7, 1977).

there were significant violations by the Soviet Union following the first few months of its enactment.[88]

The United States and Canada experienced disagreements regarding both States' extensions to a 200-mile fishing limit. In early May, 1978, American fisherman on the west coast obtained an injunction barring Canadian boats from fishing for salmon in United States waters.[89] Negotiations between the two States to resolve this issue failed. Canada then withdrew from a 1978 interim agreement with the United States[90] and ordered all American fishing ships out of Canadian waters.[91] The United States retaliated by banning all Canadian vessels from American waters.[92] However, talks resumed, and removal of the bans appeared imminent when legislation was enacted and signed by

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On April 27, 1977, Cuba and the United States signed a fishing agreement that creates an interim boundary between the two States. Agreement Concerning Fisheries Off the Coasts of the United States, Apr. 27, 1977, United States-Cuba, T.I.A.S. No. 8689. The boundary line lies essentially midway between the two States. 76 DEP'T ST. BULL. 687 (1977). For the boundary's precise coordinates, see 42 Fed. Reg. 24,134 (1977). The agreement gives Cuban fishing vessels some access to American waters. The United States is to determine the allowable catch, and American observers are to be allowed on board Cuban vessels. Cuba also agreed to allow American ships some access to Cuban waters. N.Y. Times, May 22, 1977, § A, at 22, col. 2.

88. As of early April, 1977, the United States had issued 97 violations and citations to foreign fishing fleets, the bulk of them going to the Soviets. However, there were no seizures. Wash. Post, Apr. 8, 1977, § A, at 14, col. 2. Following the seizure of the Russian trawler *Taras Shevchenko* on April 10, 1977, and amid charges of lax enforcement, President Carter issued a strong warning to the Soviets. N.Y. Times, Apr. 11, 1977, § A, at 30, col. 1. The Soviet Union subsequently ordered its ships to abide strictly by the law. *Id.* Apr. 15, 1977, § A, at 1, col. 2.

89. In ordering the ban, the district court ruled that a 1978 interim agreement between the United States and Canada was invalid because of lack of congressional approval. The court stayed the injunction, however, to allow such legislation pending before the Congress to be passed. Wall St. J., May 23, 1978, at 18, col. 2. The 1978 agreement is similar to the 1977 one. *Id.* The 1977 agreement is reprinted in 16 INT'L LEGAL MATERIALS 590 (1977).

90. Under the 1978 accord, Canadian fisheries were allowed greater access to United States fishing grounds. Wall St. J., May 23, 1978, at 18, col. 2. Canada agreed to an American request to ban fishing in Canadian waters for two months to allow the salmon to cross into United States waters to spawn. *Id.* However, Canada failed to carry out this agreement for almost a month on the grounds that these conservatory measures were not needed. *Id.* This failure led to the injunction. The United States did not comply with its obligation to allow Canadian fishermen greater access to American salmon grounds. *Id.*

91. N.Y. Times, June 3, 1978, § A, at 5, col. 2. In 1977, the United States Fisheries Management Council for the Northwest lowered the quota of salmon available to Canadians. In retaliation, Canada closed its shrimping grounds off Vancouver Island. Wall St. J., May 23, 1978, at 18, col. 2.

92. N.Y. Times, June 3, 1978, § A, at 5, col. 2.

President Carter in July, 1978.[93] This legislation gives President Carter authority to lift the ban on Canadian ships if Canada reciprocates.[94] Negotiations will continue toward a comprehensive settlement on boundaries and fishing rights between the two States.[95]

Problems have arisen over attempts by certain foreign States, such as Japan and South Korea, to invest in United States fishing fleets. These investments and the resultant control of American fishing boats allow foreigners to bypass the quota imposed under the FCMA, which was designed to protect American fishermen.[96] Legislation has been introduced in Congress that would limit such foreign investment.[97] Similarly, foreign processing ships have been purchasing large quantities of fish caught by American vessels.[98] However, Congress enacted legislation in 1978 that gives United States fish processors first rights to process fish by limiting the amount of fish that can be sold to foreign processors.[99]

Finally, there have been, and will no doubt continue to be, challenges to the administrative process created by the FCMA.[100] In

93. *Id.* July 2, 1978, § A, at 14, col. 4. Act of July 1, 1978, Pub. L. No. 95-314, 92 Stat. 376.

94. N.Y. Times, July 2, 1978, § A, at 14, col. 4.

95. The East coast boundaries present problem areas other than salmon fishing, particularly cod fishing in the Georges Bank off the coast of Maine. Canada claims that part of the Georges Bank is within its EEZ. The United States maintains that the Georges Bank "is an undersea extension of Cape Cod" and therefore entirely under American jurisdiction. *Id.* June 26, 1977, § A, at 4, col. 1.

96. Under the FCMA of 1976, the only requirements that foreign investors must meet are that their ships be built in the United States and that a majority of the members on corporate boards of directors of United States fishing fleets be American citizens. Christian Sci. Monitor, June 3, 1977, at 3, col. 1. Japanese interests have already invested heavily in American fishery concerns. N.Y. Times, Apr. 20, 1977, § A, at 4, col. 1.

97. Representatives Au Coin (D.-Or.) and Studds (D.-Mass.) introduced legislation to amend the FCMA. Their bill required foreign ownership in American fishing fleets to be less than 25% for the vessels to be considered American-owned. Foreigners who continuously owned such ships prior to June 27, 1977, were exempted. H.R. 2564, 95th Cong., 1st Sess. (1977).

98. Under the FCMA of 1976, the quotas as to foreigners apply only to the amount they catch and not to the processing of fish. Wall St. J., Feb. 3, 1978, at 8, col. 2. Many States have been negotiating joint ventures with American fishing boats whereby American fishermen would catch the fish and then sell it to the foreign processors. The United States imported $2.5 billion worth of fish products from foreign States. *Id.* Aug. 16, 1978, at 8, col. 1.

99. Foreign processors are allowed to buy only that amount of fish that American processors will not or cannot handle. Wall St. J., Aug. 16, 1978, at 7, col. 1. This law is in the form of an amendment to the FCMA. *See* Act of Aug. 28, 1978, Pub. L. No. 95-354, 92 Stat. 519.

100. The Act provides for eight regional fishery councils to determine management plans. *See Recent Developments*, *supra* note 1, at 729. For a discussion on how these regional councils make their determinations, see Knight, *Management Procedures in the U.S. Fishery Conservation Zone*, 2 MARINE POL'Y 22 (1978). The

Maine v. Kreps,[101] Maine claimed that the quota allocated to foreign fishing fleets was too high.[102] After a federal district court dismissed the case, the United States Court of Appeals for the First Circuit remanded the case and directed the district court to order the Secretary of Commerce to show reasons behind the quota allocation.[103] On remand the district court found the Secretary's determination to be correct, and the court of appeals affirmed. The court of appeals stated that the Secretary, in establishing quotas, could take into consideration the effect such a quota may have on international relations.[104]

Panama Canal Treaty Signed

On September 7, 1977, the United States and Panama successfully concluded negotiations on a treaty to restore Panamanian control over the Panama Canal and Canal Zone.[105] The treaty is comprised of two parts—the Canal Treaty, which hands over con-

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author notes several potential problem areas created by the Act, including the potential conflict between the federal government and the states because of the government's interests in allowing foreign fishing within American waters and the fishing of tuna by foreign fleets. *Id.* at 27-29.

101. No. 77-45 (S.D. Me. July 18, 1977), *remanded*, 563 F.2d 1043 (1st Cir.), *aff'd*, 563 F.2d 1052 (1st Cir. 1977).

102. Comment, *Foreign Fishing Quotas and Administrative Discretion Under the 200-Mile Limit Act*, 58 B.U. L. REV. 95, 97 (1978). The United States Secretary of Commerce, pursuant to the FCMA, had determined that the optimum yield should be lowered to conserve the herring stock off the New England coast. The Secretary's figures corresponded with those of the International Convention for the Northwest Atlantic Fisheries. This group is made up of 11 States which have agreed to comply with existing fishing quotas. *Id.* at 96-99. Under the FCMA, the optimum yield is that amount which will provide an overall benefit to the nation. It is to be based on the maximum sustainable yield, which "is a strictly biological determination of the largest volume of fish that can be harvested annually without diminishing the size of a particular stock." *Id.* at 98.

103. Maine v. Kreps, 563 F.2d 1043, 1051-52 (1st Cir.), *aff'd*, 563 F.2d 1052 (1st Cir. 1977).

104. The court had determined in its first hearing that this factor of "greatest overall benefit to the Nation" could "include such national benefit as one to be derived from permitting foreign fishing." *Id.* at 1049. The court reiterated this view in the second hearing. *Id.* at 1054.

This view, however, has been criticized as inconsistent with the FCMA itself. One commentator states that the United States Congress did not intend the international benefits of allowing foreign fishing in American waters to be a factor in determining quotas. Rather, the main intent was conservation of the nation's fisheries. Therefore, he concludes, the Secretary's use of this factor was improper. Comment, *Foreign Fishing Quotas and Administrative Discretion Under the 200-Mile Limit Act*, 58 B.U. L. REV. 95 (1978).

105. The treaty and related documents are set forth in 16 INT'L LEGAL MATERIALS 1021 (1977).

trol of the Canal and Canal Zone to Panama, and the Neutrality Treaty, which deals with the status of the Canal after Panama assumes full control.[106]

The Canal Treaty calls for full control of the Canal by Panama after 1999. Until that time the Canal will operate under American control but with both American and Panamanian participation.[107] When the treaty becomes effective six months after formal ratification, Panama will assume jurisdiction of the Zone over a thirty-month period.[108] The United States and Panama also agreed not to negotiate with any other State concerning the building of another canal.[109] Finally, the United States is to provide military defense for the Canal until the year 2000. In 2000 a board consisting of both Americans and Panamanians will be established to govern defense matters.[110]

The Neutrality Treaty provides that Panama will keep the Canal open to "peaceful transit" for all States, including transit for warships.[111] After 1999, both the United States and Panama shall have the right to defend the Canal militarily against any external threats.[112]

Senate ratification of the treaty provided one of the most controversial recent political issues in the United States. On March 16, 1978, the Senate ratified the Neutrality Treaty, which included a reservation introduced by Senator De Concini (D.-Ariz.) that would permit American military intervention after 2000 should the threat of internal disorder threaten the Canal's closing.[113] Panama sharply criticized this provision and threatened not to ratify the entire treaty.[114] When the Canal Treaty came up for a

106. For a history of the background of the negotiations, see SENATE COMM. ON FOREIGN RELATIONS, 95TH CONG., 1ST SESS., BACKGROUND DOCUMENTS RELATING TO THE PANAMA CANAL 3 (Comm. Print 1977). *See also* SUBCOMM. ON SEPARATION OF POWERS, SENATE COMM. ON THE JUDICIARY, 95TH CONG., 2D SESS., THE PROPOSED PANAMA CANAL TREATIES: A DIGEST OF INFORMATION 3 (Comm. Print 1978). For the complete hearings, see *Panama Canal Treaties: Hearings on Executive N Before the Senate Comm. on Foreign Relations*, 95th Cong., 1st & 2d Sess. pts. 1-5 (1977-1978); *Panama Canal Treaty (Disposition of United States Territory): Hearings Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 95th Cong., 1st & 2d Sess. pts. 1-4 (1977-1978).

107. N.Y. Times, Apr. 9, 1978, § A, at 1, col. 5.

108. *Id.* Formal ratification will occur either by March 1, 1979, or when Congress approves implementing legislation, whichever comes earlier. *Id.* June 17, 1978, § A, at 1, col. 6.

109. *Id.* Apr. 19, 1978, § A, at 1, col. 5. However, the Senate passed a measure that "would nullify the mutually exclusive commitment on a new canal." *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* Mar. 17, 1978, § A, at 1, col. 6.

114. *Id.* Apr. 11, 1978, § A, at 1, col. 3. Opponents of the treaty in the Senate and House also took steps to secure its defeat. The Senate considered and rejected a

Senate vote, the same reservation was offered,[115] but a compromise was reached. The De Concini reservation was retained, but another provision was added which provides that United States intervention will be permitted solely for the purpose of keeping the Canal open—not to interfere with Panamanian internal affairs. This compromised version of the Canal Treaty was subsequently passed by the Senate and accepted by Panama.[116] Finally, on June 16, 1978, President Carter and General Torrijos, President of Panama, formally signed the treaty, thus ending thirteen years of negotiations.[117]

Antarctic Treaty States Meet to Determine the Future of Antarctica

Representatives from the thirteen States party to the Antarctic Treaty of 1955[118] met in London in September, 1977, to draft plans for the management of this region.[119] This meeting dealt primarily with the issues of oil exploration[120] and the harvesting of the small, shrimp-like krill that are found in abundant numbers in the Antarctic Ocean. The parties called for a ban on oil exploration and for the promulgation of regulations by each party to limit its catch of krill.[121] The delegates drafted agreements on these meas-

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proposal that would have required House approval for disposal of American property in the Canal Zone. *Id.* Apr. 6, 1978, § A, at 11, col. 6. Opponents also challenged disposition in the courts. However, the federal court of appeals upheld the Senate's action. Edwards v. Carter, 580 F.2d 1055 (D.C. Cir. 1978).

115. N.Y. Times, Apr. 12, 1978, § A, at 1, col. 4.

116. *Id.* Apr. 19, 1978, § A, at 1, col. 6.

117. *Id.* The Instruments of Ratification, along with the Amendments, Conditions and Reservations to the Treaty, are reprinted in 17 INT'L LEGAL MATERIALS 817 (1978).

118. *Signed* Dec. 1, 1959, [1961] 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71. The States that are parties to the Treaty are: Argentina, Australia, Belgium, Brazil, Chile, Czechoslovakia, Denmark, France, East Germany, Japan, the Netherlands, New Zealand, Norway, Poland, Romania, South Africa, the Soviet Union, the United Kingdom, and the United States. TREATY AFFAIRS STAFF, OFFICE OF THE LEGAL ADVISOR, U.S. DEP'T OF STATE, TREATIES IN FORCE 260 (1978).

119. Wash. Post, Sept. 20, 1977, § A, at 1, col. 4.

120. *Id.* However, the fear of oil exploration was lessened when a report submitted to the Conference estimated that it will be 15 to 25 years before exploration can begin. London Times, Oct. 4, 1977, at 7, col. A.

121. London Times, Oct. 11, 1977, at 6, col. F. The principal harvesters of the krill are the Soviet Union and Japan. Wash. Post, Sept. 20, 1977, § A, at 1, col. 4. The United States supports the ban on oil exploration and has suggested guidelines by which the Antarctic's unique ecosystem should be protected. One such guideline is the creation of an international regime comprised of representatives from treaty States and from non-treaty States that have a direct interest in the re-

ures when they subsequently met in Canberra, Australia, in March, 1978.[122] The drafted agreement provides for a Commission to set annual quotas[123] and for inspectors to monitor compliance of member States.[124] The delegates did not agree upon financing and voting procedures of the Commission[125] and took no action on the various claims of sovereignty made over the Antarctic.[126]

Intergovernmental Maritime Consultative Organization Reaches Agreement on Oil Tanker Pollution Control

Prompted by the recent rash of oil tanker spills, the Intergovernmental Maritime Consultative Organization (IMCO) reached an agreement to control tanker spillage,[127] to take full effect in

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gion. This body would control all elements of the ecosystem except for whales and seals. Its duties would include the gathering and analyzing of data and the development and enforcement of conservation measures. Mink, *Oceans: Antarctic Resource and Environmental Concerns*, DEP'T ST. BULL., Apr., 1978, at 51, 52-53.

122. N.Y. Times, March 24, 1978, § A, at 8, col. 1.

123. *Id.*

124. Controversy continues as to the nationality of such inspectors. *Id.*

125. The United States is opposed to the prorating of costs based on the formula used in the United Nations. *Id.*

126. States claiming territorial sovereignty over part of Antarctica are Argentina, Australia, Great Britain, Chile, France, New Zealand, and Norway. Both the Soviet Union and the United States refuse to recognize any of these claims and make none themselves. Wash. Post, Sept. 30, 1977, § A, at 22, col. 1. The Antarctic Treaty of 1959 puts a freeze on any claims of territorial sovereignty. The Antartic Treaty, *signed* Dec. 1, 1959, art. 4, [1961] 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71.

Because of the complexity of such claims it has been suggested that the management of the Antarctic be placed under an international organization rather than under only those States that are parties to the treaty, most of which have territorial claims. Note, *Thaw in International Law? Rights in Antarctica under the Law of Common Spaces*, 87 YALE L.J. 804, 807 (1978). The author of this Note describes and analyzes the various theories of sovereignty that States have claimed over the Antarctic. The author concludes that the parties to the Antarctic Treaty are too interested in their own territorial and economic claims and thus that an international regime over the Antarctic needs to be established, probably under the guidance of the United Nations.

127. Wall St. J., Feb. 27, 1978, at 12, col. 3. Approximately 85-90% of oil spilled into the oceans results from tanker discharge. N.Y. Times, Mar. 19, 1978, § A, at 9, col. 1. The Carter administration had previously called for stricter standards for oil tankers entering United States ports. These standards called for double bottoms on new tankers and a segregated ballast system, an inert gas system to prevent dangerous fuel vapor from exploding, back-up radar, and improved emergency steering on all tankers. Carter, *President Announces Measures to Control Marine Oil Pollution*, 76 DEP'T ST. BULL. 422, 422-23 (1977).

Congress has already taken action on this matter. The Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, § 5, 92 Stat. 1471, introduced by Senator Magnuson (D.-Wash.), includes the same regulations that President Carter has called for. This bill is in the form of an amendment to the Ports and Waterways Safety Act of 1972, 33 U.S.C. §§ 1221-1227 (1976). The Senate passed the bill on May 26, 1977. Wall St. J., May 27, 1977, at 4, col. 4. For a discussion of the legislation, see S. REP. No. 176, 95th Cong., 1st Sess. (1977). The House also passed this measure as

1985.[128] Debate focused on which method should be utilized to prevent oil discharge at sea by ships. An American proposal would have required a double bottom for all new ships and a segregated ballast tank on both new and existing vessels.[129] A less expensive proposal by Great Britain called for a system to clean the tanks safely rather than for a segregated ballast tank.[130] IMCO agreed that such tanks should be required on new tankers and that either system may be used for existing ships.[131] There is no requirement, however, for double bottoms.[132] Standards for steering, radar, avoidance of vapor fuel explosions, and inspection were also agreed upon.[133]

IMCO representatives held another meeting in July, 1978, to develop qualification standards for captains and crews of ships. The agreement establishes stricter training standards than those currently in force in several maritime States.

Mediterranean States Fail to Agree on a Comprehensive Plan to Prevent Pollution of the Mediterranean

In October, 1977, legal scholars and technicians representing the Mediterranean States met in Italy under the sponsorship of the United Nations. Their objective was to draft general principles that would minimize pollution of the Mediterranean Sea, caused primarily by land-based sources.[134] Participants plan to divide harmful pollutants into two categories, a "black" list and a "gray"

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amended in the form of H.R. 13311, 95th Cong., 2d Sess. (1978), on September 12, 1978. *See* H.R. REP. No. 1384, 95th Cong., 2d Sess. pts. 1-2 (1978).

128. 43 Fed. Reg. 16,886, 16,887 (1978). The Senate must still ratify the convention, but it is expected to do so. Wall St. J., Feb. 27, 1978, at 12, col. 4.

129. London Times, Feb. 7, 1978, at 4, col. C. The American proposal would have applied to all tankers weighing more than 20,000 tons. L.A. Times, Feb. 7, 1978, pt. 3, at 8, col. 1.

130. The British claim that this Crude Oil Washing (COW) system is both cheaper and more environmentally sound than a segregated ballast system. The COW system uses oil sprays rather than water to clean out the tanks. London Times, Feb. 6, 1978, at 15, col. A.

131. 43 Fed. Reg. 16,886 (1978). The agreement is reprinted in 17 INT'L LEGAL MATERIALS 546 (1978). The segregated ballast tank applies to new ships of over 20,000 tons and to existing ships of over 45,000 tons. 43 Fed. Reg. 16,886 (1978).

132. 43 Fed. Reg. 16,886 (1978).

133. *Id.*; London Times, June 7, 1978, at 3, col. D.

134. N.Y. Times, Oct. 22, 1977, § A, at 3, col. 4. In February, 1977, 16 of the 18 Mediterranean States drew up a preliminary agreement in Athens, Greece, to control land-based pollution. *Id.* Oct. 22, 1977, § A, at 3, col. 4. For the draft of this preliminary agreement, see U.N. Doc. UNEP/IG. 6/6 (1976), *reprinted in* 16 INT'L LEGAL MATERIALS 958 (1977). In July, 1977, these States met in Monte Carlo to es-

list.[135] The black list would contain substances that are not to be discharged into the Mediterranean,[136] while the gray list would contain substances that may be discharged only in certain amounts and under governmental supervision.[137] Unfortunately, the delegates were unable to reach agreement when they met in Monaco in January, 1978.[138] Many States thought that the cost of regulating their land-based industries would be too high.[139]

Conference Reviews Seabed Treaty

The first review conference of the 1972 Seabed Treaty met in Geneva in June, 1977.[140] The treaty prohibits nuclear and other weapons of mass destruction from emplacement on the seabed beyond the territorial limits of States.[141] The Conference produced a Final Declaration which stated that the provisions of the treaty had been "faithfully observed" by all parties.[142] Although the Conference rejected a Japanese proposal to establish an international program for verification,[143] a review procedure to monitor technological advancements in this area was implemented.[144] Finally, the delegates agreed to convene another review session in

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tablish findings and conclusions based upon scientific data. London Times, Jan. 9, 1977, at 4, col. F.

It is estimated that 90% of the pollution in the Mediterranean Sea comes from land-based sources. *Id.* The problem is further compounded because there is only one outlet for the Mediterranean waters, the Straits of Gibraltar. Thus, it takes approximately 80 years before a complete change of water occurs. Wash. Post, Sept. 4, 1977, § A, at 31, col. 1.

135. N.Y. Times, Oct., 22, 1977, § A, at 3, col. 4.

136. *Id.* Among others, these substances include mercury, DDT, plastics, and radioactive wastes. *Id.*

137. *Id.*

138. London Times, Jan. 16, 1978, at 4, col. F. However, three agreements reached in Barcelona, Spain, in February, 1976, by these States came into force on Feburary 12, 1978. U.N. MONTHLY CHRON., Mar., 1978, at 33, 33. These agreements provided for oil pollution control by ships and by land-based sources in the Mediterranean. *See Recent Developments*, *supra* note 1, at 733-34.

139. It has been estimated that the cost of such a comprehensive plan may be between $30 and $40 million. Wash. Post, Sept. 4, 1977, § A, at 31, col. 1. However, the value of the fishing and tourist industries in this region has been estimated to be $800 million annually. BUS. WEEK, Oct. 31, 1977, at 32, 32.

140. U.N. MONTHLY CHRON., July, 1977, at 18, 18.

141. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, *done* Feb. 11, 1971, [1972] 23 U.S.T. 701, T.I.A.S. No. 7337.

142. U.N. MONTHLY CHRON., July, 1977, at 18, 18. The verification procedures are complicated. If one party is suspicious of the activities of another, the complaining party must first consult with the party suspected of a violation. If this complaint is of no avail, the complainant is then to inform the other parties to the treaty. Finally, if this step accomplishes nothing, the complaining party may bring it to the attention of the United Nations Security Council. Väyrynen, *The Sea-Bed Treaty Reviewed*, 34 WORLD TODAY 236, 237 (1978).

143. Väyrynen, *The Sea-Bed Treaty Reviewed*, 34 WORLD TODAY 236, 239 (1978).

144. *Id.* at 241. Specifically, it calls for the Conference of the Committee on Dis-

1982.[145]

International Whaling Commission Takes Steps to Preserve the Oceans' Whales

The International Whaling Commission (IWC), which met in June, 1977, made progress in reducing the number of whales that can be killed.[146] The IWC voted to reduce the quotas for whale hunting by thirty-six percent.[147] It also prohibited the killing of all bowhead whales, a controversial issue within the United States.[148] The IWC met again in June, 1978, but produced no no-

armament, an independent group dedicated to disarmament, to set up an "expert committee" on this matter. *Id.*

145. The treaty itself calls for a review conference to determine the effectiveness of the treaty's enforcement five years after it takes effect. U.N. MONTHLY CHRON., July, 1977, at 18, 18. However, the United States thought that because there is little danger of an expansion of the arms race to the seabed floor, a review conference should be held only when circumstances call for it. Väyrynen, *The Sea-Bed Treaty Reviewed*, 34 WORLD TODAY 236, 243 (1978). However, some think that the development of seabed mining may necessitate regular review conferences. *Id.*

146. The United States had previously taken such action within its EEZ. On October 18, 1977, President Carter signed legislation barring commercial whaling within American waters. N.Y. Times, Oct. 19, 1977, § A, at 20, col. 3. The Act is in the form of an amendment to the 1972 Marine Mammal Protection Act. *See* Pub. L. No. 95-136, § 4, 91 Stat. 1167 (1977). For a comprehensive analysis on the development of whaling law and the shortcomings and alternatives to the present world regulatory structure, *see* Scarff, *The International Management of Whales, Dolphins, and Porpoises: An Interdisciplinary Assessment* (pts. 1-2), 6 ECOLOGY L.Q. 323, 574 (1977).

147. Christian Sci. Monitor, June 27, 1977, at 3, col. 4. The most significant cutback occurred in sperm whale killing. The kill quota was reduced by 90% in the North Pacific. *Id.* However, prompted by the Soviet Union and Japan, the two major whaling States, the IWC increased the sperm whale quota by approximately 850%. L.A. Times, Dec. 7, 1977, pt. 1, at 5, col. 1. Subsequently, both Japan and the Soviet Union agreed to these quotas. N.Y. Times, Dec. 15, 1977, § A, at 16, col. 4. However, the Soviet Union has announced that it plans to cease all commercial whaling operations within the next five years. L.A. Times, Dec. 9, 1978, pt. 1, at 1, col. 2.

148. This ban prompted the Eskimos to seek legal redress. On October 21, 1977, Judge John Sirica of the federal district court for Washington, D.C., issued a temporary restraining order that the State Department file an objection to the ban with the IWC. N.Y. Times, Oct. 23, 1977, § 1, at 25, col. 5. The decision was appealed, and the Court of Appeals for the District of Columbia reversed. On appeal, the United States Supreme Court refused to overturn the court of appeals. *Id.* Oct. 25, 1977, § A, at 18, col. 6. The United States, prompted by this action, persuaded the IWC to allow the Eskimos to hunt about one-half of the previous year's quota of the bowhead. *Id.* Dec. 8, 1977, § A, at 21, col. 1. There have been some questions raised as to why the United States decided to allow the IWC to set these quotas because the Eskimos' activities were already regulated under existing

table changes, although it increased the quotas for certain whales.[149] The IWC took no action, however, on a proposal calling for a ten-year moratorium on all whale hunting.[150]

Dispute Between Chile and Argentina over Islands

In 1977, a 100 year-old dispute between Chile and Argentina over three small islands in the Beagle Channel[151] appeared to be resolved in favor of Chile.[152] In 1971, both sides agreed to submit their case to an international arbitration panel, with Great Britain as the final decisionmaker.[153] In May, 1977, Britain announced that the panel had determined that the islands belonged to Chile.[154] Argentina rejected the decision, primarily because it would further extend Chile's EEZ to the south.[155] It remains uncertain what effect this rejection will have on the relations between the two States.[156]

CONCLUSION

Between March, 1977, and December, 1978, many significant events have occurred in the Law of the Sea. UNCLOS III continues to dominate the limelight in its attempt to draft a comprehensive plan to govern the world's oceans. Because of the impasse that occurred on the issue of seabed mining, the success of UNCLOS III is uncertain. However, in light of its substantial pro-

American law banning commercial whaling. Storro-Patterson, *The Bowhead Issue—Harpoon Aimed at the U.S.*, 11 OCEANS 63 (1978).

149. N.Y. Times, July 1, 1978, § A, at 5, col. 1. In December, 1978, the IWC decreased the quota for sperm whales by 41%. L.A. Times, Dec. 21, 1978, pt. 1, at 5, col. 1.

150. *Id.*

151. Wash. Post, May 3, 1977, § A, at 10, col. 2. The Beagle Channel is at the southern tip of South America. In 1881, Chile and Argentina signed a treaty dividing the Channel Islands between the two States based upon the channel's flow pattern. Treaty on the Boundary Between the Argentine Republic and Chile, July 23, 1881, Argentina-Chile, 12 Martens Nouveau Recueil (2d Series) 491. However, because there are so many islands in this channel, a dispute exists as to which course the channel actually flows.

152. Wash. Post, May 3, 1977, § A, at 10, col. 2.

153. *Id.*

154. For the complete decision, *see* Beagle Channel Arbitration (Argentina v. Chile), 17 INT'L LEGAL MATERIALS 632 (1977).

155. Wash. Post, Jan. 26, 1978, § A, at 21, col. 1. It is believed that large reserves of oil lie beneath the area between these islands and Antarctica. *Id.*

156. Viewing the threat of war between the two States as a distinct possibility, Pope John Paul II announced in December, 1978, that he would send a special emissary to mediate the dispute. Wash. Post, Dec. 23, 1978, § A, at 1, col. 5.

gress on other issues, it is hoped that UNCLOS III will succeed in creating the most comprehensive world agreement ever reached.

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